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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, RICARDO IVAN PALOS-MARQUEZ, Defendant.	Criminal Case No. 08CR0249-BTM DATE: April 11, 2008 TIME: 11:00 a.m. STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and A. DALE BLANKENSHIP, Assistant United States Attorney, and hereby files the attached statement of facts and memorandum of points and authorities in support of government's motion for reciprocal discovery.

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I

STATEMENT OF THE CASE

On February 27, 2008, a federal grand jury for the Southern District of California returned a five-count Indictment, charging Defendant, Ricardo Ivan Palos-Marquez, with transportation of illegal aliens and aiding and abetting, in violation of 8 U.S.C. § 1324(a)(2)(A)(ii) and (v)(II). Defendant was arraigned on the Indictment on February 28, 2008, and entered a not guilty plea.

II

STATEMENT OF FACTS

A. IMMIGRATION HISTORY

Defendant is a citizen of Mexico and a legal permanent resident of the United States.

B. CRIMINAL AND ARREST HISTORY

Defendant was apprehended on April 18, 2006, while transporting 25 illegal aliens along with two other co-principals. He was not prosecuted for this offense. On February 3, 2008, Defendant was apprehended with a group of 8 illegal aliens who fled from border patrol agents in a pick-up truck. Defendant was with the aliens hiding nearby the recently abandoned truck when he was apprehended. Defendant was not prosecuted for this offense.

C. INSTANT OFFENSE - FEBRUARY 7, 2008

On February 7, 2008, at approximately 5:00 p.m., United States Border Patrol Agent Myles Staunton was traveling eastbound on Otay Lakes Road. Agent Staunton passed an area known as the "Riding and Hiking Gate." This is a very desolate, remote, and unpopulated area. This area is located approximately 3 miles east of the Otay Mesa, California, Port of Entry and approximately 5 miles north of the international border. This area is commonly used by illegal aliens to further their entry into the United States. This area is also commonly used by alien smugglers to pick up illegal aliens and transport them to locations within the United States .

Approximately 250 yards east of the "Riding and Hiking Gate", Agent Staunton approached a sharp right corner that has no visibility of oncoming traffic. While traveling through the corner, a green Dodge Ram pick-up truck was driving westbound in the eastbound lane through the blind corner. The Dodge Ram was passing a UPS carrier van. Agent Staunton applied his brakes and veered right to avoid a head-on collision with the pick-up. The UPS driver gestured toward the pick-up truck. Based upon his knowledge of the area and the gesturing of the UPS driver, Agent Staunton suspected that the pick-up was involved in illegal activity,

Agent Staunton notified Agents Simon and Martinez via service radio that he believed the pick-up was involved in illegal activity. Agents Simon advised Agent Staunton that the UPS driver stopped at their position and advised them that he saw the pick-up stop and load four individuals who were standing on the side of the road. Agent Staunton aired a description of the vehicle, and the direction of travel. Agent Staunton made a u-turn and began traveling westbound on Otay Lakes Road. Agent Staunton made contact with Agent Ray Padron via radio and traveled to the location where Agent Padron stopped the Defendant, Ricardo Ivan Palos-Marquez.

Agent Simon and Martinez were parked at the “Riding and Hiking Gate” on the south side of Otay Lakes road, when they received the radio call from Agent Staunton regarding the pick-up truck. Agent Simon and Martinez saw the green pick-up truck pass their location at a high rate of speed. Moments later, the UPS driver pulled over where Agents Simon and Martinez were parked. The UPS driver told the agents that he observed the green pick-up truck stop on the side of the road and load several individuals into the pick-up. Agents Simon and Martinez began traveling westbound but lost visual contact with the pick-up. Agent Simon contacted Agent Ray Padron and advised him of the vehicle description and direction of travel. Agents Simon and Martinez received word back from Agent Padron that he conducted a vehicle stop and they proceeded to that location.

Agent Padron received the radio call about the pick-up truck from Agent Simon at about the same time the pick-up truck was passing his location. Agent Padron began following the pick-up and called the dispatch to run checks on the vehicle registration. After receiving vehicle checks from dispatch, Agent Padron activated his emergency lights and sirens and initiated a vehicle stop. Agent Padron approached the vehicle on the drivers side. Agent Padron asked the driver, Ricardo Ivan Palo-Marquez, his citizenship and the driver stated that he is a citizen of Mexico and a legal permanent resident of the United States.

Agent Padron observed four individuals laying down in the back seat of the passenger bay. Agent Padron asked each of the passengers their citizenship and each stated that they are citizens of

Mexico without documents to enter or reside in the United States. Agent Padron apprehended the Defendant and transported Defendant and the material witnesses to the Border Patrol Station for processing.

1. Defendant's Statement

Agent Elliot Gallina advised Defendant of his Miranda rights at approximately 11:00 p.m. and Defendant waived his rights and agreed to make a statement. Senior Patrol Agent Juan Angeli and Agent Cesar Martinez witnessed the rights advisement and subsequent statement made by Defendant. Defendant stated that he was a lawfully admitted permanent resident but that he lost his card. Defendant stated that he made arrangements with a person to transport aliens. Although he has known the person with whom he made the arrangements to smuggle the aliens for five years, he did not know this person's name. Defendant stated that he met the person in City Heights, at an Exxon gas station prior to the alien smuggling event, and that he agreed to smuggle the aliens for $50.00 per person.

Defendant stated that he has smuggled illegal aliens 6 times previously, and that he had been arrested on 3 of those occasions. Defendant stated that each smuggling event was coordinated by a different person. Defendant stated that he was not the owner of the pick-up, and he did not know the pick-up owner. Defendant stated that he knew that the people he was transporting were in the United States illegally and he stated that he was transporting them in exchange for compensation.

2. Material Witnesses' Statements

Border Patrol Agents interviewed the material witnesses: Apolinar Santos-DeAsis; Perfecto Toto-Cruz; Vicente Alvarado-Victoria; and Francisco Diego-Benabe. Each of the material witnesses stated that they are citizens of Mexico without documents that would allow them to enter or remain in the United States lawfully. Two of the material witnesses, Vicente Alvarado-Victoria and Francisco Diego-Benabe, stated that they made arrangements to be smuggled into the United States and that they were led through the mountains by a foot-guide. Both of these material witnesses stated that others were paying on their behalf between $1500.00 and $1800.00 to be smuggled to destinations inside the United States.

The material witnesses Perfecto Toto-Cruz and Apolinar Santos-DeAsis, both denied being led through the mountains by a foot-guide. These material witnesses also denied making arrangements with a smuggling organization to be transported to their destinations in the United States.

D. PRIOR OFFENSE - AUGUST 7, 2007

On August 7, 2008, United States Border Patrol Agents with the Smuggling Interdiction Group were performing anti-smuggling operations near Pine Valley, California. Pine Valley is located approximately 12 miles north and 12 miles east of the Tecate, California, Port of Entry. Agents were conducting operations in unmarked vehicles and in plain clothes.

At approximately 9:30 p.m., Agent Sean Wilson was in a stationary position on the westbound lanes of Interstate 8, approximately 2 miles east of the Japatul Valley Road Exit when he observed a white Ford Explorer pass his location. Agent Wilson noticed that the vehicle was riding extremely low to the ground as if it was carrying a heavy load in the cargo area. Alien smugglers often use sport utility vehicles to smuggle large numbers of illegal aliens. Agent Wilson noticed the driver and passenger sitting in the front seats wearing their safety belts. Agent Wilson began following the SUV and while doing so, he called in the vehicle license plate, California license plate number 4BDN091. Border Patrol dispatch personnel responded that the vehicle registration information revealed a pending master file in the name of either Alfredo or Christian Jimenez-Aguilar with the address of 3724 Dalbergia Street, San Diego, California. A pending master file indicates to agents that the vehicle may have been the subject of numerous releases of liability. It is common for vehicles used in alien smuggling to be transferred between numerous individuals.

Agent Wilson observed the vehicle travel in and out of the designated lane of travel. Agent Wilson also observed the vehicle sway from side to side as if heavily laden. Agent Wilson believed that the swaying was caused by extra weight inside the vehicle, because there was no wind to cause the vehicle to move in that manner. While Agent Wilson was following the vehicle, he observed a human head emerge from the backseat and then quickly disappear. Agent Wilson continued to follow the vehicle and he radioed his observations to other agents in the area.

At approximately 10:00 p.m., Agent Brian Wakefield conducted a vehicle stop using his emergency lights and sirens. The vehicle continued traveling approximately 1 mile before pulling to the center shoulder of the Interstate 8. Agent Wakefield and Agent Wilson approached the vehicle and observed 4 people in the cargo area of the vehicle and 3 people in the back seat area of the vehicle all

7 of these individuals were attempting to conceal themselves. Each of the passengers stated that they were citizens of Mexico without documents that would allow them to remain in the United States lawfully.

The driver of the vehicle was Defendant, Ricardo Ivan Palos-Marquez. Defendant and the passengers were transported to the El Cajon Border Patrol Station for processing. Each of the passengers was questioned and then voluntarily returned to Mexico except for Eliot Moya-Mendoza, who was identified as having a criminal record.

1. Defendant's Statement

Agent Wilson advised Defendant of his Miranda rights at approximately 1:00 a.m., and Defendant waived his rights and agreed to speak with the agents. Defendant stated that he was working as an alien smuggler for the last 2 years in the areas of Pine Valley and Jamul. Defendant stated that he was recently apprehended while accompanying a pair of alien smugglers in the Jamul area. Defendant stated that he was in training at the time and he was learning the routes of travel and how to spot anti-smuggling agents. Defendant was smuggling 25 illegal aliens on that occasion, and he was working for the "Calixtos". Defendant was to transport the 25 aliens to Corona, California. Defendant stated that the "Calixtos" contact him with the time, date, and place where the aliens are to be picked up and he transports the aliens to another smuggler who in turn provides follow-on transportation for the aliens.

Defendant stated that he has transported illegal aliens, usually in groups of 5 to 10, on 2 - 3 occasions per month, for the last 2 years. Defendant stated that the "Calixtos" pay him approximately $75.00 per alien.

2. Material Witness Statement

At the border patrol station, agents determined that one of the smuggled aliens, Elio Moya-Medoza, had a significant criminal history and was previously deported from the United States on August 20, 2002. Elio Moya-Mendoza was advised of his Miranda rights, he waived his rights and agreed to speak with agents. Moya-Mendoza stated that he is a citizen of Mexico, with no documents to enter the United States. Moya-Mendoza stated that he crossed into the United States on August 3, 2007 through the mountains near Tecate, California. Moya-Mendoza also stated that he served time in jail for his prior convictions.

Moya-Mendoza's prior convictions include: infliction of corporal injury on a spouse in violation of California Penal Code § 273.5, 3 years prison; possession of methamphetamine in violation of California Health and Safety Code § 11377(a), 24 months probation; possession of methamphetamine in violation of California Health and Safety Code § 11377(a), 16 months prison; possession of methamphetamine in violation of California Health and Safety Code § 11377(a), 2 years prison.

On September 25, 2007, Moya-Mendoza plead guilty to 3 counts of illegal entry in violation of 8 U.S.C. § 1325; and he was sentenced to 48 months' custody. Moya-Mendoza is currently serving his sentence in Victorville Federal Correctional Complex.

III

GOVERNMENT'S MOTIONS

A. UNITED STATES' MOTION FOR RECIPROCAL DISCOVERY

The Government has voluntarily complied and continues to comply with the requirements of Rule 16(a). On April 1, 2008, Defendant filed a motion to compel discovery. To date, the Government has provided 161 pages of discovery and 2 cds/dvds to defendant. The United States, pursuant to Rule 16(b), hereby requests defendant to permit the United States to inspect, copy, and photograph any and all books, papers, documents, photographs, tangible objects, or make copies of portions thereof, which are within the possession, custody or control of defendant and which he intends to introduce as evidence in his case-in-chief at trial.

The United States further requests that it be permitted to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, which are in the possession or control of defendant, which he intends to introduce as evidence-in-chief at the trial or which were prepared by a witness whom defendant intends to call as a witness. The United States also requests that the court make such orders as it deems necessary under Rule 16(d)(1) and (2) to insure that the United States receives the discovery to which it is entitled.

Federal Rule of Criminal Procedure 26.2 requires the production of prior statements of all witnesses, except the defendant. The time frame established by the rule requires the statement to be provided after the witness has testified, as in the Jencks Act. Therefore, the United States hereby requests that defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before trial to be set by the court. This order should include any form these statements are memorialized in, including but not limited to, tape recordings, handwritten or typed notes and/or reports.

IV

CONCLUSION

For the foregoing reason, the Government respectfully requests that its motions for reciprocal discovery be granted.

DATED: April 8, 2008.

Respectfully Submitted,

KAREN P. HEWITT
United States Attorney

S/ A. Dale Blankenship
A. DALE BLANKENSHIP
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RICARDO IVAN PALOS-MARQUEZ, Defendant.	))))))))))	Criminal Case No. 08CR0547-JM **CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, A. DALE BLANKENSHIP, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Erick Guzman, Esq., Federal Defenders of San Diego
Erick_Guzman@fd.org

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 8, 2008.

s/ A. Dale Blankenship
A. DALE BLANKENSHIP